

PHILIP S. WARDEN (SBN 54752)
philip.warden@pillsburylaw.com
HUGH M. RAY, III (*pro hac vice* pending)
hugh.ray@pillsburylaw.com
PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: 415.983.1000
Facsimile: 415.983.1200

*Attorneys for Union Oil Company of California
and Chevron U.S.A. Inc.*

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

In re
HVI CAT CANYON, INC.,
Debtor

Case No. 9:19-bk-11573-MB

Chapter 11

CHEVRON'S LIMITED OBJECTION TO THE TRUSTEE'S SALE MOTION, ASSUMPTION NOTICE, ABANDONMENT MOTION, AND RESERVATION OF RIGHTS

Hearing: October 5, 2020
Time: 10:00 a.m.
Place: Courtroom 201
1415 State Street, Santa Barbara
California CA 93101

Union Oil Company of California and Chevron U.S.A. Inc. (collectively “Chevron”), through undersigned counsel, submit this limited objection and reservation of rights (the “Limited Objection”) to the chapter 11 trustee of the above-captioned estate’s (the “Trustee”) motion to, among other things, sell substantially all of the estate’s assets (the “Sale Motion”) [Docket No. 1243] and abandon other assets (“Abandonment Motion”) [Docket 1288], and the Assumption Notice [Docket No. 1290].

1 (defined herein), and respectfully represents as follows:

2 **BACKGROUND**

3 1. On August 28, 2020, the Trustee filed his Sale Motion. On September 8, 2020 the Court
4 entered its order approving the bid procedures proposed in the Sale Motion (the “Bid Procedures
5 Order”) [Docket No. 1268].

6 2. On September 14, 2020, the Trustee filed his *Notice of Motion and Motion for Order
7 Authorizing the Abandonment of any Unsold Assets and Rejection of any Unsold Unexpired Leases
8 and/or Executory Contracts* (the “Abandonment Motion”) [Docket No. 1288].

9 3. On September 14, 2020, the Trustee filed his *Notice of Executory Contracts and
10 Unexpired Leases that may be Assumed and Assigned in Connection with the Sale of the Debtor’s
11 Assets and the Proposed Cure Amounts with Respect Thereto* (the “Assumption Notice”) [Docket No.
12 1290]. The Trustee attached as exhibits to the Assumption Notice the list of “Designated Contracts”
13 that could be assumed and assigned in connection with a sale. This list of Designated Contracts
14 included several where one of the Chevron entities appears to be a party. However, the cure is
15 unspecified.

16 4. The Sale Motion and Abandonment Motion envision a sale of certain properties, and
17 the possible abandonment of others. However, Chevron has identified properties owned by the Debtor
18 that are not identified on the exhibits to either the Sale Motion or the Assumption Notice. Chevron
19 contacted the Trustee regarding those properties and the Trustee will investigate and should add any
20 accidentally excluded properties to the sale/auction process. The Trustee may have to serve an
21 amended notice to include any omitted properties. Chevron intends to continue to work cooperatively
22 with the Trustee.

23 5. Chevron (or its affiliates) is a party to various agreements with the Debtor. Chevron’s
24 treatment on these contracts remains unclear because the final terms of an acquisition are unknown.
25 The Bid Procedures Order allows great flexibility on the terms of a proposed sale, leaving parties such
26 as Chevron with insufficient information to determine whether it will be ultimately necessary to pursue
27

1 its objection.

2 **LIMITED OBJECTION**

3 6. Chevron supports a sale of the Debtor's assets to a responsible operator and does not
4 have an objection to the Trustee pursuing a sale of the Debtor's assets generally. As mentioned above,
5 Chevron identified potentially omitted properties that are not part of the Sale Motion. Chevron has
6 brought these to the Trustee's attention and the Trustee may add any accidentally omitted assets to the
7 sales process, and Chevron reserves the right to object if he does not.

8 7. Additionally, the final terms of a sale remain undetermined for the following reasons:

- 9 a. The purchaser(s) may change,
10 b. The REDU purchaser (if any) remains unknown,
11 c. The assets being sold may change,
12 d. The liabilities being assumed remain uncertain, and
13 e. The creditors know nothing about the identity of other bidders.

14 8. Other parties have filed objections to the Sale Motion on similar grounds. Chevron
15 adopts the objections of all other objecting parties if needed to preserve Chevron's right to object on
16 those grounds.

17 9. Chevron reserves the right to object to the "Texaco" contracts on the Assumption
18 Notice depending on the eventual outcome of the sale. Chevron reserves the right to adopt the
19 positions of other lease counterparties who have also objected to the proposed treatment of leases
20 generally and the cure values listed on the Assumption Notice. The Assumption Notice does not
21 provide much notice to the parties whose rights are affected. The Notice was filed at 2:53 pm Pacific
22 Time on September 14, mailed around the nation, and requires an objection to be filed in court by
23 September 21. Chevron reserves the right to supplement given the short notice. Additionally, the cure
24 amount on the Buganko Surface Rental Agreement should be adjusted for legal fees and costs of
25 Buganko in enforcing the agreement.

26 10. Under 11 U.S.C. §363(b)(1), the estate may sell assets "after notice and a hearing."
27 "Notice and a hearing" is defined to mean "after such notice as is appropriate in the particular

1 circumstances, and such opportunity for a hearing as is appropriate in the particular circumstance.” 11
2 U.S.C. §102(1)(a). Here, the Trustee bears the burden of proof that sufficient notice has been given to
3 all creditors and parties in interest of the assets to be sold, the liabilities to be assumed, and the
4 important *bona fides* of a purchaser. The Constitution also requires minimal notice that comports with
5 due process. Given the delays of the postal service, less than 7 days actual notice of cure amounts was
6 provided to the hundreds of parties affected by the Assumption Notice.

7 11. If the sale does more than merely convey assets and assume liabilities, but rather
8 includes a *sub rosa* plan for distribution of assets, release and establishment of claims, or other non-
9 sale actions, then the sale would be objectionable in the absence of a plan. As the current terms are in
10 flux, this may not become an issue of contention. Additionally, any proposed use of proceeds must
11 follow the rules on the absolute priority rule. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973
12 (2017).

13 12. Finally, concomitant with the Sale Motion, the Trustee has filed the Abandonment
14 Motion and the Assumption Notice. Through these, the Trustee has identified properties that *may* be
15 assumed and seeks authority to possibly abandon those that are not. Of course, Chevron reserves the
16 right to object to any asset’s abandonment on any grounds, including that the asset to be abandoned is
17 not property of the estate (because, for example, the leases had expired prepetition). Similarly,
18 abandonment can be constrained by other legal obligations. The Trustee disclosed that the Stalking
19 Horse Purchaser conducted an environmental study and shared the results with him—but not with the
20 creditor body. Despite acknowledgment of the issue, the Trustee’s declarations in support contain
21 inadequate facts to support his position on the issues raised by *Midlantic Nat. Bank v. N.J. Dep’t of*
22 *Envil. Prot.*, 474 U.S. 494, 507 (1986). Chevron cannot tell whether the Trustee has met his burden
23 to demonstrate that the estate can lawfully abandon the property as proposed in the Abandonment
24 Motion.

25 **RESERVATION OF RIGHTS**

26 13. Chevron reserves its right to object to the Sale Motion, Assumption Notice, or
27 Abandonment Motion on any grounds asserted by any other person. Chevron further reserves the right

1 to object to the sale, assumption, or abandonment on any independent ground, including those raised
2 herein and any constitutional, statutory or prudential ground. Chevron will supplement this objection,
3 if necessary, once the outcome of the auction has been disclosed and the full details of a specific asset
4 sale to a specific purchaser are known.

5 **CONCLUSION**

6 WHEREFORE, Chevron respectfully requests that, unless this limited objection is resolved or
7 withdrawn, the Sale Motion be denied. Chevron continues to reserve all rights and requests that the
8 Court order such other relief as is just and necessary.

9 Dated: September 21, 2020

10 By /s/ Philip S. Warden
11 Philip S. Warden

12 *Attorneys for Union Oil Company of California and
13 Chevron U.S.A. Inc.*

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Pillsbury Winthrop Shaw Pittman LLP, 4 Embarcadero Center, 22nd Floor, San Francisco, CA 94111

A true and correct copy of the foregoing document entitled (specify): Chevron's Limited Objection to the Trustee's Sale Motion, Assumption Notice, Abandonment Motion, and Reservation of Rights

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 09/21/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attachment.

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

09/21/2020 Anna Lau
Date Printed Name

The foregoing is true and correct.

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

ADDITIONAL SERVICE INFORMATION (if needed)

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

- Anthony A Austin - anthony.austin@doj.ca.gov
- William C Beall - will@beallandburkhardt.com; carissa@beallandburkhardt.com
- Bradley D Blakeley - blakeley@blakeleylawgroup.com; bradleyblakeley@gmail.com
- Alicia Clough - aclough@loeb.com, mnielson@loeb.com, ladocket@loeb.com
- Marc S Cohen - mscohen@loeb.com; klyles@loeb.com
- Alan D Condren - berickson@seedmackall.com
- Alan D Condren - acondren@seedmackall.com; berickson@seedmackall.com
- Alec S Dimario - alec.dimario@mhllp.com; debra.blondheim@mhllp.com; Syreeta.shoals@mhllp.com
- Jeremy Faith - Jeremy@MarulisFaithlaw.com, Helen@MarguliesFaithlaw.com; Angela@MarguliesFaithlaw.com; Vicky@MarguliesFaithlaw.com
- Karl J Fingerhood - karl.fingerhood@usdoj.gov, efile_ees.enrd@usdoj.gov
- H. Alexander Fisch - Alex.fisch@doj.ca.gov]
- Don Fisher - dfisher@ptwww.com; tblack@ptwww.com
- Brian D Fittipaldi - brian.fittipaldi@usdoj.gov
- Ellen A Friedman - efriedman@friedmanspring.com; khollander@friedmanspring.com
- Gisele M Goetz - gmgmgoetz@hbsb.com; ggoetz@collegesoflaw.edu; cecilia@hbsb.com
- Karen L Grant - kgrant@silcom.com
- Ira S Greene - Ira.Greene@lockelord.com
- Matthew C. Heyn - Matthew.Heyn@doj.ca.gov; mcheyn@outlook.com
- Brian L Holman - b.holman@mpglaw.com
- Brian L Holman - b.holman@musickpeeler.com
- Tracy K Hunckler - thunckler@daycmtnurphy.com; cgori@daycartermurphy.com
- Samantha Indelicato - sindelicato@omm.com
- Eric P Israel - eisracl@DanningGill.com, danninggill@gmail.com; eisrael@ecf.inforuptcy.com
- Razmig Izakelian - razmigizakelian@quinnemanuel.com
- Evan M Jones - ejones@omm.com, ejones@omm.com
- Alan H Katz - akatz@lockelord.com

- John C Keith - jolm.keith@doj.ca.gov
- Jeannie Kim - jekim@sheppardmullin.com, dgatmen@sheppardmullin.com
- Anna Landa – Anna@MarguliesFaithlaw.com; Helen@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com
- Mitchell J Langberg - mlangberg@bhfs.com; dcrudup@dhfs.com
- Maxim B Litvak - mlitvak@pszjlaw.com
- Vincent T Martinez - llimone@twitchellandrice.com; smccomish@twitchellandrice.com
- Michael Arthur McConnell (TR) – Michael.mcconnell@kellyhart.com
- Brian M Metcalf - bmetcalf@omm.com; brian-metcalf-9774@ecf.pacerpro.com
- Monserrat Morales - Monsi@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com; Helen@marguliesfaithlaw.com; Angela@MarguliesFaithLaw.com
- Alan I Nahmias - anahmias@mbnlawyers.com, jdale@mbnlawyers.com
- Jerry Namba - nambaepiq@earthlink.net; atty_namba@bluestylus.com
- David L Osias - dosias@allenmatkins.com, bcrfilings@allenmatkins.com, kdemorest@allenmatkins.com; csandoval@allenmatkins.com
- Darren L. Patrick - dpatrick@omm.com; Darren-patrick-1373@ecfpacerpro.com; sindelicato@omm.com; ejones@omm.com
- Jeffrey N Pomerantz - jpomerantz@pszjlaw.com
- Benjamin P Pugh - bpugh@ecg.law; mhamburger@ecg.law; calendar@ecg.law
- Edward S Renwick - erenwick@hanmor.com; iaguilar@hanmor.com
- J. Alexandra Rhimarhim@hrhrlaw.com
- Todd C. Ringstad - becky@ringstadlaw.com; arlene@ringstadlaw.com
- Mitchell E Rishe - mitchell.rishe@doj.ca.gov
- George E Schulman - GSchulman@DanningGill.Com; danninggill@gmail.com; gschulman@ecf.infomptcy.com
- Zev Shechtman - zshechtman@DanningGill.com; danninggill@gmail.com; zshechtman@ecf.infomptcy.com
- Sonia Singh - ssingh@DanningGill.com; danninggill@gmail.com; ssingh@ecf.infomptcy.com
- Daniel A Solitro - dsolitro@lockelord.com; ataylor2@lockelord.com
- Ross Spence - ross@snowspencelaw.com, janissherrill@snowspencelaw.com; brittanyDecoteau@snowspencelaw.com
- Christopher D Sullivan - csullivan@diamondmccmihy.com; mdomer@diamondmccarthy.com; kmartinez@diamondmccarthy.com;

quentin.roberts@diamondmccarthy.com; erika.shannon@diamondmccarthy.com; aiemee.low@diamondmccarthy.com

- Jennifer Taylor - jtaylor@omm.com
- John N Tedford - jtedford@DanningGill.com; danninggill@gmail.com; jtedford@ecf.infomptcy.com
- Salina R Thomas - bankruptcy@co.kem.ca.us
- Meagan S Tom - meagan.tom@lockelord.com; autodocket@lockelord.com; taylor.warren@lockelord.com; autodocketdev@lockelord.com
- Patricia B Tomasco - pattytomasco@quinnmanuel.com; barbarahowell@quinnmanuel.com; cristinagreen@quinnmanuel.com
- Fred Whitaker - lshe1izer@cwlawyers.com; spattas@cwlawyers.com
- William E. Winfield - wwinfield@calattys.com; scuevas@calattys.com
- Richard Lee Wynne - richard.wynne@hoganlovells.com; tracy.southwell@hoganlovells.com; cindy.mitchell@hoganlovells.com
- Emily Young - pace1team@gardencitygroup.com; rjacobs@ecf.epiqsystems.com; ECFinbox@epiqsystems.com
- Aaron Ede Leest - adeleest@DanningGill.com; danninggill@gmail.com; adeleest@ecf.inforuptcy.com